IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22301 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASHIDABANU W/O SHAHBUDDIN CHANDBHAI SHAIKH - Petitioner(s)

Versus

POLICE COMMISSIONER,AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :
MR YV VAGHELA for Petitioner(s) : 1,
MR LR POOJARI, AGP for Respondents.
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/01/2006

ORAL JUDGMENT

1. Rashidabanu wife of Shahbuddin Chandbhai Shaikh, petitioner, has filed this petition of habeas corpus under Article 226 of the Constitution of India with a prayer that this Court may issue a writ of habeas corpus or any other appropriate writ, order or

direction, for quashing and setting aside the order of detention dated 15th October, 2005, passed by the Commissioner of Police, Ahmedabad City – respondent No.1 herein under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "PASA Act"), as the same being unconstitutional and violative of provisions of Articles 21 and 22 of the Constitution of India.

2. When the matter was placed for hearing before this Court on 18th November, 2005, this Court has issued rule and made it returnable on 14th December, 2005.

3. On behalf of respondents, Mr.L.R.Poojari, learned AGP appears. He has filed affidavit of Commissioner of Police, Ahmedabad City, in this behalf. So with the consent of parties, the matter is taken up for final hearing today.

4. Mr.Y.V.Vaghela, learned advocate for the petitioner has invited my attention to the order of detention dated 15th October, 2005, passed under the provisions of PASA Act and a committal order dated 15th October, 2005, by which the petitioner was sent to Vadodara Jail. He has also invited my attention to the

grounds supplied by the authority dated 15th October, 2005, to the petitioner. After going through the said grounds, the learned advocate for the petitioner stated that, there are four incidents and in all these four incidents, the petitioner has committed offences under the Prohibition Act. All the offences are committed under Sec.66-B of the Bombay Prohibition Act. The first offence is committed on 4.11.2004 wherein the petitioner was storing 17 litres country made liquor. The second offence committed on 23.3.2005 where she has stored 12 litres country made liquor. The third offence is committed on 6.5.2005 where she has stored 15 litres country made liquor and the fourth offence is committed on 13.10.2005 where she has stored 19 litres country made liquor.

5. It has been stated that the authority has also furnished the grounds and also the FSL report to the petitioner. In the FSL report, it was stated that the goods contained only methyl alcohol and not anything in this behalf. It was also stated that the goods in question was not fit for medical purpose or any syrup but it was fit for consuming liquor in this behalf. The FSL report is dated 6th April, 2005, as well as dated 13th April, 2005, both the reports are the same.

6. The learned advocate on behalf of the petitioner states that it is alleged in the grounds of detention that the petitioner is indulging in the offence of prohibition and dealing in country made liquor which is injurious to health and therefore the petitioner is detained as bootlegger as per Section 2(b) of the PASA Act. It was stated that the petitioner was in judicial custody but in any case if petitioner filed a bail application then she may release on bail and she may indulge into anti-social activities at any time.

7. Learned advocate for the petitioner stated that though this petition raises number of questions but he has confined his argument only on the point that in all cases wherein only question of storing of country made liquor is alleged against the petitioner. Though FSL report has been taken but the said report does not help the case in favour of the detaining authority. As regards petitioner-detenu is concerned, the learned advocate has confined his case only to the point of mere storing of country made liquor. According to him, mere storing of country made liquor will not amount to breach of public order, it may only amount to breach of law and order situation. The learned advocate for the

petitioner stated that the subjective satisfaction arrived at by the authority is not proper in view of the materials supplied and the grounds stated in the detention order.

8. In support of the same he has relied upon the judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police reported in AIR 1989 SC 491 and the Division Bench judgment of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and others reported in 2000(1) GLH 393.

9. On the other hand, Mr.L.R.Poojari, learned AGP has relied upon the order of the authority and the affidavit filed by the detaining authority. The affidavit states that the detaining authority has carefully examined the relevant material relating to the four cases registered against the petitioner, and in those cases the petitioner falls within the definition of bootlegger as per Section 2(b) of the PASA Act.

10. In my view, I do not intend to decide any other issue except mere narration of prohibition cases will

not amount to violation of public order but it will only amount to breach of law and order. The same is covered by the judgment of Apex Court in the case of Piyush Kantilal (supra) and Division Bench judgment of this Court in the Ashokbhai Jivraj @ Jivabhai Solanki (supra), the order of detention deserves to be quashed and set aside.

11. For the foregoing reasons, the petition is allowed. The impugned order dated 15.10.2005 passed by the respondent No.1 authority is quashed and set aside. The detenu-Rashidabanu W/o. Shahbuddin Chandbhai Shaikh is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

syed/